Supreme Court, U.S.
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No. 01-3022

IN THE

Supreme Court of the United States

LOUIS J. DE MAIO

Petitioner

v.

DEPARTMENT OF THE TREASURY
and
THE MERIT SYSTEMS PROTECTION BOARD

On Petition For Writ Of Certiorari
To The U.S. Court Of Appeals
For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED FOR REVIEW

1). Whether a federal employee is protected against prohibited personnel practices under the purview of the Civil Service Reform Act of 1978 ?

2). Whether a federal employee can receive a fair and impartial hearing before an Administrative Law Judge when the federal Agency, a party to the litigation, has the exclusive right to remove the Administrative Law Judge from office under the Code of Federal Regulations ?

PARTIES TO THE PROCEEDING

Petitioner:

Louis J. De Maio

Respondents:

Department of the Treasury

Merit Systems Protection Board

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Authorities	iv
Jurisdiction	1
Statement of Facts	1-5
Argument	6-8
Conclusion	9
Appendix:	
Decision U.S. Circuit Court of Appeals for Federal Circuit	App. 1
Decision of MSPB	App. 2
Decision of Administrative Law Judge	App. 3

TABLE OF AUTHORITIES

CASES	Page
Dugan v Ramsay 560 F. Supp 1230	4, 7
Lopez v Dept. of Interior 5 13 88 MSPR Doc. De 03518810007 37 MSPR 24	5
Stover v Dept. of Interior (1994 MSPB) 63 MSPR 46	5
Degraaff v Dept. of Veterans Affairs (1997 MSPR) 73 MSPR 574	5
STATUTES	
28 USCA	1
Civil Service Reform Act of 1978	3, 5, 6, 9
5 U S C 7121 (d)	3
Civil Rights Act 1964 as amended	3
5 U S C 2302 (b)(1)	3, 5
5 U S C 7702	3
5 U S C 7701	5, 7
CODE OF FEDERAL REGULATIONS	
5 CFR 1201.101	4
5 CFR 1201.102	4
5 CFR 1201.103	4
5 CFR 1209.5 (a)	7
5 CFR 1209.5 (b)	6, 7
5 CFR 1201.133	7, 8
U.S. Constitution 14th amendment	6, 7, 8
OTHER AUTHORITIES	
NORD Agreement Article 4, 41	2

JURISDICTION

On May 16, 2001 the Untied States Court of Appeals for the Federal Circuit dismiss the Petitoners' appeal for lack of jurisdiction because the Board did not commit legal error. From that decision comes this appeal under Title 28 of the United States Code Annotated.

STATEMENT OF FACTS

The Petitioner is employed as an Attorney (Estate Tax) GS-905-12 by the Department of the Treasury, Internal Revenue Service hereinafter called (Agency).

On 7-31-98 the Petitioner's group manager, Ronald Watt, issued a written memorandum to the Petitioner to "no change " an estate tax examined case that had been returned by District Counsel with a recommended deficiency exceeding $250,000.

On 10-15-98 a second case was returned from District Counsel who refused to issue a Statutory Notice of Deficiency where the tax liability exceeded $250,000. The group manager issued a second written memorandum to the Petitioner "to settle the case."

The Petitioner's Position Description only allows for the determination of the correct tax and there is no critical element that allows for the authorization "to settle cases." Settlement authority applies only to District Counsel GS-905-14 and Appeals Officers GS-905-14.

The Petitioner refused "to settle" the two cases on the premise that the Petitioner is not authorized under his Position Description and such direction by the Agency is a Prohibited Personnel Practice since such action is:

> "a significant change in duties or responsibilities which is inconsistent with the employee's salary and grade level."

On 1-22-99 the Agency in a written reprimand to the Petitioner for his refusal to comply with the written directions of settling cases, incorporated in the letter of

reprimand is the written statement issued by the Chief of Examination, Monica Baker, which states:

> "your misconduct raises serious concerns about your judgment, reliability, veracity, trustworthiness and ethical conduct."

This libelous statement is the third Prohibited Personnel Practice engaged in by the Agency since it reflects on:

"the character, loyalty or suitability of such individual."

Based on these three prohibited personnel practices, which are in writing and not in dispute as to their contents, the Petitioner filed a grievance under the NORD Agreement, the negotiated agreement between the Agency and the National Treasury Employees Union.

The Petitioner filed a grievance under Article 4 of the NORD Agreement entitled Protection Against Personnel Practices. Article 41 of the NORD Agreement states in part:

> "any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment".

The remedy sought was modification of the Petitioner's Position Description permitting settlement authority.

Appeals has settlement authority because it is the only Agency office that can consider hazards of litigation when evaluating a case; retroactive promotion to GS-905-14 to enable the Petitioner's salary and grade commensurate with Appeals, back pay with interest coupled with compensatory and punitive damages for the written libelous and false written statement made by the Agency as to the Petitioner's character, loyalty and ethics.

The Agency denied the grievance and from that denial the Petitioner appealed to the Merit Systems

Protection Board hereinafter called (MSPB) within the purview of the Civil Service Reform Act of 1978 5 U S C 7121 (d) which states:

> "An aggrieved employee affected by a prohibited personnel practice under 2302 (b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing in accordance with the provision of the parties negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the MSPB to review the final decision pursuant to section 7702 of this title in case of any personnel action that could have been appealed to the Board."

In addition to the grievance being based on three prohibited personnel practices, there is an allegation of political favoritism to taxpayers. Also incorporated in the grievance is reprisal based on discrimination since the Petitioner previously filed a formal EEO Complaint in a denial of a promotion. Since the prohibited personnel practices did not apply to any other attorneys in the group and only to the Petitioner, it appears that the reprisal is a violation of the Civil Rights Act of 1964 as amended. The grievance was made part of the appeal as Exhibit 7 and discrimination is stated in 32 A of the appeal. The issue of discrimination alone would warrant jurisdiction to MSPB under 5 U S.C 2302 (b)(1). The issue of reprisal

based on discrimination is part of the record.

An appeal to MSPB occurred on 2-17-2000 No. PH-1221-00-0188-W-1.

By acknowledgment order dated 2-18-2000 directed the Agency to contact the Petitioner within 35 days to discuss the possibility of settlement.

The Administrative Law Judge hereinafter called (ALJ) granted the Agency an extension of time to respond by Order dated March 8, 2000. The Agency representative did not enter his appearance until March 9, 2000. It is apparent that the ALJ acted in an ex parte manner in violation of 5 CFR 1201.101, 5 CFR 1201.102 and 5 CFR 1201.103.

The ALJ subsequently granted all the Agency's Motions, denied all the Petitioner's Motions, removed documents from the official record i.e request to produce documents and ultimately ruled in favor of the Agency 100 % and against the Petitioner 100 %. The ALJ, in essence, assumed jurisdiction of the appeal, decided everything in favor of the Agency except to hear the case on the merits.

The ALJ dismissed the appeal based on lack of jurisdiction by decision dated April 17, 2000.

The full Board refused to grant a hearing and sustained the ALJ on the premise that there was no error in law or by the regulations.

From a decision of the Board an appeal was taken to the United States Court of Appeals for the Federal Circuit 01-3022.

The United States Court for the Federal Circuit denied the Petitioner a hearing and ruled that the MSPB does not have jurisdiction to adjudicate prohibited personnel practices.

The Court refuse to follow the case of Dugan v Ramsey 560 F. Supp. 1230 decided in the Federal District Court of Rhode Island where the Court ruled that MSPB

has jurisdiction over allegations of prohibited personnel practices brought before it by direct appeal pursuant to 5 U S C 7701.

Additionally, the Court refused to consider the case of Lopez v Department of Interior 5-13-88, MSPB Doc. No. DE 03518810007, 37 MSPB 24 which states allegations of prohibited personnel practices can provide MSPB with jurisdiction over an employee's appeal despite provision in the negotiated grievance procedure stating that it is the exclusive means of resolving matters which falls within its coverage for employees who alleges prohibited personnel practices under 5 USCS 2302 (b)(1).

The Court did not consider Stover v Department of Interior (1994 MSPB) 63 MBPR 46 where the Appellant who alleges that he had disclosed violation of Agency Rules and Regulations as well as gross mismanagement and abuse of authority, a claim that entitled him to jurisdiction hearing.

Lastly, an administrative judge erred in dismissing a whistleblowers appeal for lack of jurisdiction since he neglected to advise the Appellant of the requirements for establishing jurisdiction. Degraaff v Department of Veterans Affairs (1997 MSPB) 73 MSPR 574.

There is sufficient law within the Civil Service Reform Act of 1978 and the Code of Federal Regulations case law that indicates the MSPB does have jurisdiction to adjudicate appeals involving protection to federal employees against Agency's involved in prohibited personnel practices. The Court erred in not remanding the case to MSPB for a hearing on the merits.

ARGUMENT

With evidence in the record of written definitive violations of three prohibited personnel practices, political favoritism in tax administration and reprisal based on discrimination before the MSPB on appeal, to assert that MSPB lacks jurisdiction to hear the case on the merits is an absolute travesty of justice. The ALJ has protected the Agency against any accountability or responsibility which is grossly inconsistent with the protection of federal employees as stated in the Civil Service Reform Act of 1978. The Agency is essentially protected from any wrong doing and with partial ruling by the ALJ has a form of immunity against any charges of any nature. Such treatment to the Agency was exemplified in his case.

For example, when the Petitioner filed an appeal, the ALJ imposed the burden of proof of jurisdiction and timeliness of the appeal by the Petitioner. These issues were not raised by the Agency but by the ALJ. It would appear that any preliminary issues should be raised by the parties and not the ALJ. Conversely, the ALJ granted the Agency an extension of time to respond to the appeal before the Agency representative even enter his appearance and conducted in an ex parte manner. No notice given to the Petitioner who is the attorney of record. Is this equal protection under the 14th amendment to the Constitution? The ALJ originally assumed jurisdiction over the appeal and proceeded to rule 100% in favor of the Agency. When it came time to hear the appeal on the merits, the ALJ asserted MSPB lacked jurisdiction. Is this due process under the law of the 14th amendment to the Constitution? If the ALJ did not have jurisdiction in this appeal the ALJ should have been precluded from granting extensions, ruling on motions, denying motions removing documents from the record or act in an ex parte manner. The ALJ gave no reason why 5 CFR 1209.5 (b) does not apply in this case.

The full Board for MSPB refuse to grant a hearing to the Petitioner and the decision lacks any rationale as to the partiality of the ALJ of why MSPB does not have jurisdiction to adjudicate issues involving prohibited personnel practices.

The U.S. Court of Appeals for the Federal Circuit went through great lengths in its decision to state that in whistleblowing cases, the Petitioner must first seek corrective action from Special Counsel before appealing to the Board as stated in 5 CFR 1209.5 (a). However the decision is completely devoid of why 5 CFR 1209.5 (b) does not apply which gives the Petitioner the option either to seek corrective action from Special Counsel before appealing to the Board or to take the appeal directly with the Board. It is a denial of due process under the 14th amendment to the Constitution when the Petitioner elects to appeal to the Board when the option is exercised under 5 CFR 1209.5 (b). Appealing to the Board directly gives MSPB the jurisdiction to hear the case on the merits. The Board is incorrect when it stated that there was no violation of law or regulations by the ALJ.

The U.S. Court of Appeals for the Federal Circuit refuse to follow Dugan v Ramsay 560 F. Supp. 1230 in the United States District Court for Rhode Island where the Court ruled that the MSPB does have jurisdiction over allegation of prohibited personnel practices brought before it by direct appeal pursuant to 5 U S C 7701. The U.S. Court of Appeals for Federal Circuit refusal to follow his case which is essentially the identical issues of jurisdiction of MSPB to adjudicate cases involving prohibited personnel practices. The denial of the Federal Circuit to follow this significant case is a denial of due process under the 14th amendment to the Constitution. Although this case was reversed on appeal for other reasons, it was not for lack of jurisdiction.

The paramount regulation is 5 CFR 1201.133 which

gives the Agency the exclusive right to file a complaint against the ALJ including the right to remove the ALJ from office. In no forum of legal jurisdiction does a party to the litigation have the right to remove the judge. Such a regulation gives the Agency an unfair advantage by having dominion and control over those who decide the cases. The ALJ lack any independence and are fully cognizance that to many cases decided against the Agency tantamount to job removal. Job retention should never be the basis of deciding a case. This regulation creates an unlevel and slanted forum and grossly unfair to all those seeking remedies under the law. Regulation 5 CFR 1201.133 is a denial of equal protection under the law as stated in the 14th amendment to the Constitution. Such a regulation, even if not exercised, but the mere threat of removal is sufficient to give an incorrect decision. It is not a question if 5 CFR 1201.133 should be abolished, it is a question that 5 CFR 1201.133 must be abolished.

CONCLUSION

There are over 1.8 million federal employees. Most, but not all, federal employees are covered under the Civil Service Reform Act of 1978 and MSPB. Regardless of the issue, the percentage of federal employees that are successful before MSPB is less than 20 %. The Agency is successful in over 80 % of the time and the reason is abundantly clear. The Agency, a party to the litigation, has the exclusive right under the Code of Federal Regulations to remove the ALJ from his position. Job retention should never be the basis of deciding the rights of this Petitioner or any other federal employee seeking justice before MSPB.

WHEREFORE, the Petitioner prays that this Honorable Court grant the Petitioner's Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APP.I

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. This disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

01-3022

LOUIS J. DE MAIO,

v. Petitioner,

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

DECIDED: May 16, 2001

Before RADER, Circuit Judge, PLAGER, Senior Circuit Judge, and DYK, Circuit Judge. PER CURIAM

Louis J. De Maio ("Petitioner") seeks review of the final decision of the Merit Systems Protection Board ("Board") dismissing his appeal for lack of jurisdiction. Because the Board did not commit legal error, we affirm.

BACKGROUND

Petitioner is employed by the Department of the Treasury, Internal Revenue Service ("agency") as an attorney. In 1998, petitioner was directed by his group

manager to settle certain tax cases but refused to do so. Petitioner alleged that he was not authorized to settle cases because such an action would involve a significant change in his duties and responsibilities that would be inconsistent with his position description, salary, and grade. On January 22, 1999, petitioner received a written reprimand from the agency for his refusal to comply with his manager's directions.

Petitioner filed a grievance at the district level, which was denied. On February 17, 2000, petitioner filed an appeal with the Board charging the agency with having engaged in prohibited personnel practices by directing him to settle the cases that he allegedly was not authorized to settle and for sending him a reprimand letter that questioned his veracity, trustworthiness, and ethics. Petitioner alleged that the agency's actions were based on his whistleblower activities and submitted two letters he had sent to an agency superior, which he claimed contained protected disclosures.

In the Board's initial decision, the administrative judge dismissed petitioner's appeal for lack of jurisdiction. De Maio v. Dep't of the Treasury, No. PH-1221-00-0199-W-1 (M.S.P.R. Apr. 17, 2000). The administrative judge held that the Board had jurisdiction only if (1) the matter appealed was an "otherwise appealable action" or (2) petitioner had first sought corrective action from the Office of Special Counsel ("OSC"). The administrative judge found that the matter was not an "otherwise appealable action" under 5 C.F.R. § 1209.2(b)(2), and that petitioner had not exhausted his remedies before the OSC, as prescribed by 5 U.S.C. § 1214(a)(1).

Petitioner's subsequent petition to the Board was denied on September 5, 2000. This petition for review followed.

DISCUSSION

Decisions of the Board must be sustained unless they are arbitrary, capricious, not in accordance with law, obtained without procedures required by rule, law, or regulation, or unsupported by substantial evidence. See 5 U.S.C. § 7703(c); Hayes v. Dep't of the Navy, 727 F.2d 1535, 1537 (Fed. Cir. 1984). Whether the Board has jurisdiction to adjudicate a case is question of law, which this court reviews do novo. Forest v. Merit Sys. Prot. Bd., 47 F.3d 409, 410 (Fed. Cir. 1995). When an individual appeals to the Board, he has the burden of proving, by a preponderance of the evidence, that the Board has jurisdiction. id; 5 C.F.R. § 1201.56(a)(2). The question in this case is whether the Board erred in concluding that it lacked jurisdiction to hear petitionees appeal.

The Board's jurisdiction is limited to that expressly granted by statute or regulation. Cruz v. Dep't of the Navy , 934 F.2d 1240, 1243 (Fed. Cir. 1991) (en banc). Petitioner contends that the Board has jurisdiction to review and decide his appeal based on 5 U.S.C. § 7701(a). This court has held, however, that § 7701 confers jurisdiction over a prohibited personnel practice only when the prohibited personnel practice is otherwise appealable to the Board by law, rule, or regulation. Brodt v. Merit Sys. Prot. Bd., 11 F.3d 1061, 1062 (Fed. Cir. 1993). As the Board found, no statute or regulation makes the actions of which petitioner complains appealable to the Board under § 7701. Petitioner cites 5 U.S.C. § 7701 (c)(2) for the proposition that the Board has jurisdiction to adjudicate claims concerning prohibited personnel practices. Section 7701 (c)(2) states that an agency's decision cannot be sustained by the Board if the decision is shown to have been based on a prohibited personnel practice. Although this section offers a defense against action by an agency, it is inapplicable to the threshold question of jurisdiction, which is addressed by § 7701 (a).

Petitioner further relies on Dugan v. Ramsey, 560 F. Supp. 1230 (D. R.I. 1993), rev'd, 727 F.2d 192 (1st Cir. 1984), for the proposition that the Board has jurisdiction over allegations of prohibited personnel practices. In that case, the district court states that § 7701 did not make employment eligibility status disputes directly appealable to the Board, id. at 1232.33, and denied district court review because Dugan had not exhausted his administrative remedies by first filing a charge with the OSC. Dugan, 560 F. Supp. at 1234-35. The First Circuit reversed on the jurisdictional question, finding that the government had waived the exhaustion of remedy requirement. Dugan, 727 F.2d at 194. The First Circuit did not hold that § 7701 confers jurisdiction for direct appeals to the Board over disputes involving prohibited personnel practices. Here, because the agency actions of which petitioner complains are not directly appealable to the Board by any law or regulation, he may not file a direct appeal from them under § 7701.

In the case of personnel actions not directly appealable to the Board, an individual is required to exhaust administrative remedies by first filing a complaint with the OSC, which is responsible for investigating such claims and seeking corrective action from the Board where it deems appropriate. 5 U.S.C. § 1214(a)(3); Briley v. Nat'l Archives & Records Admin., 236 F.3d 1373, 1377 (Fed. Cir. 2001); Wren v. Merit Sys. Prot. Bd., 681 F.2d 867, 873 (D.C. Cir. 1982). Only when his administrative remedy has been exhausted is an individual entitled to file an Individual Right of Action appeal under 5 U.S.C. § 1221 from a personnel action that is not otherwise appealable. See 5 U.S.C. § 1214(a)(3), 1221 (a); Marano v. Dep't of Justice, 2 F.3d 1137,1139 (Fed. Cir 1993). To the extent that Dugan, which did not even address the current exhaustion requirement, suggests that exhaustion of remedies available with the OSC is not required, we disagree with

the decision.
See Briley, 236 F.3d at 1377; Willis v. Dep't of Araic., 141 F.3d 1139, 1142 43 (Fed. Cir. 1999). Since petitioner has not exhausted his remedies before the OSC, we conclude that the Board did not err in finding that it lacked jurisdiction to review his appeal.

COSTS

No costs.

APP. 2

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

LOUIS J. DE MAIO,
Appellant,

v.

DEPARTMENT OF THE TREASURY,
Agency.

DOCKET NUMBER
PH-1221-00-0188-W-1

DATE: Sep 5, 2000

Louis J. De Maio, Bel Air, Maryland, pro se.

Robert E. Norman, Esquire, Atlanta, Georgia, for the agency.

BEFORE

Beth S. Slavet, Acting Chairman
Susanne T. Marshall, Member

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R. § 1201 11 5(d). Therefore, we DENY the petition for review,

The initial decision of the administrative judge is final. This is the Board's final decision in this matter. 5 C.F.R. §1201.113.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinal v.* Office *of Personnel Management, 931* F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law as well as review other related material at our web site, http://www.mspb.gov.

FOR THE BOARD: s/Robert E. Taylor
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

I certify that this ORDER was sent today:
By certified mail to:

Louis J. De Maio
P. 0. Box 347
Bel Air, MD 21014

By regular mail to:

Robert E. Norman, Esq.
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Kenneth L. Bates
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1900 "E" Street, N.W., Room 7412
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Merit Systems Protection Board
Northeastern Regional Office
2nd & Chestnut Streets, Room 501
Philadelphia, PA 19106

By hand to:

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1730 M Street, N.W.
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September 5, 2000 s/Ameeran Ali
Legal Assistant

Washington, DC

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
NORTHEASTERN REGIONAL OFFICE

LOUIS J. DE MAIO,
Appellant,

DOCKET NUMBER
PH-1221-00-0188-W-1

v.

DEPARTMENT OF THE TREASURY,
Agency.

DATE: April 17, 2000

Louis J. De Maio, Esquire, Bel Air, Maryland, pro se.

Robert E. Norman, Esquire, Atlanta, Georgia,
for the agency.

BEFORE

Sandra J. Squire
Administrative Judge

INITIAL DECISION

On February 15, 2000, Louis J. De Maio, Esquire, filed an appeal alleging that his employing agency, the Department of the Treasury, engaged in prohibited personnel practices. The appellant currently works as an Attorney (Estate Tax), GS-12, with the Internal Revenue Service, Baltimore, Maryland. For the reasons set forth below, the appellant's request for a hearing is denied and the appeal is DISMISSED.

JURISDICTION

The Merit Systems Protection Board (Board) may only adjudicate appeals from those actions which are made appealable to the Board under law, rule, or regulation. *See* 5 U.S.C. §7701(a); *see also* 5 C F. R. § 1201.3 (1999). The regulations of the Board, if specifically 5 C.F.R. §1201,56(a)(2) (1999). provide that appellants have the burden of demonstrating, by a preponderance of the evidence, that the Board has jurisdiction over an appeal. A preponderance of the evidence is defined as that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.56(c)(2) (1999).

The appellant was afforded an opportunity to provide evidence of the Board's jurisdiction via the Board's February 18, 2000 Acknowledgment Order, and a Show Cause Order dated March 27, 1999. The appellant made several responses to the jurisdictional issue which I have considered. The agency responded to the appeal on March 17, 2000, and included with its response a motion to dismiss based on jurisdiction. Following review, the agency's motion is GRANTED.

In his appeal and subsequent submissions, the appellant raised a number of concerns about the agency's grievance system, and the agency's failure to take steps to protect the government's interest in regard to impending statutes. The appellant also asserted that the agency engaged in prohibited personnel practices by changing his duties and responsibilities which are inconsistent with his salary and grade level, and issuing him a letter of reprimand, allegedly containing untrue written statements concerning his character, loyalty,

veracity, trustworthiness and ethical conduct. Assuming that the appellant intended these to be allegations of prohibited personnel practices, such arguments do not confer jurisdiction on the Board. *See Hunter v. Department of the* Army, 40 M.S.P.R. 449, 451 n. (1989) (an allegation of a prohibited practice, alone, cannot invoke Board jurisdiction). Further, there is no entitlement to appeal to the Board from a letter of reprimand. Likewise, there is no entitlement to appeal to the Board on agency grievance issues, or the concerns the appellant raised about the agency's failure to take steps to protect the government's interest in regard to impending statutes. *See 5 US,C§ 7501 et seq.;* 5 C,F.R. § 1201.3 (1999) (descriptions of Board .jurisdiction found in laws, rules and regulations).

As noted, it does not appear the appellant is appealing an "otherwise appealable action" as defined at 5 C.F.R.£ 1209.2(b)(2), or (b) that he has first sought corrective action from the Special Counsel. The appellant must show that the matter appealed is an "otherwise appealable action," or that he has first sought corrective action from the Special Counsel before the Board will accept his appeal. The appellant's submissions to date do not evidence such. If the appellant takes his allegations of merit systems principle violations to the Office of Special Counsel, a letter of reprimand may be appealed as an individual right of action (IRA) appeal under the provisions of the Whistleblower Protection Act (WPA), Pub.L. No. 101-12, 103 Stat. 16 (1989). However, the appellant has not taken this matter to the OSC. Thus, the Board has no jurisdiction to decide this appeal, and the matter must be dismissed.

DECISION

The appeal is DISMISSED.

FOR THE BOARD: s/Sandra J. Squire
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **May 22, 2000,** unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filedwith:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, NW., Room 806
Washington, DC 20419

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be postmarked, faxed, or hand delivered no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. If you fail to provide a statement with your petition that you have either mailed, faxed, or hand delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeal
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.